

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LOUIS VUITTON MALLETTIER,

Plaintiff,

v.

**EISENHAUER ROAD FLEA
MARKET, INC,
PATRICIA D. WALKER, and
BRUCE L. GORE,**

Defendants.

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CIVIL ACTION NO.

SA-11-CV-0124 HLH

ORDER DENYING MOTION TO COMPEL AND RETURNING CASE

The matter before the Court is defendants' motion to compel, the response thereto and reply (docket entries 71, 79 and 90). This matter has been referred to me for determination (docket entry 73).

The motion to compel was filed six weeks after the deadline for discovery motions and three weeks before the scheduled trial date. The motion was not filed with a request to extend the discovery period. The scheduling order in this case stated that "Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances...." (Docket entry 22).

Having reviewed the motion, response and reply I conclude that defendant has not shown extraordinary circumstances support the request for the Court's intervention in the parties' dispute concerning production of the surveillance tapes at this late date. Plaintiff has indicated that it will not be using the tapes at trial. The written investigative reports were based on these

tapes and those reports were produced on June 9, 2011. The fact that defendants obtained new counsel in late October 2011, just days before the discovery deadline, and the fact that new counsel did not discover that the surveillance tapes were missing from plaintiff's production until December 8, do not support a finding of extraordinary circumstances.

Concluding that the motion to compel was filed after the discovery deadline, and that extraordinary circumstances do not justify the Court's intervention in this discovery dispute, the motion to compel is **ORDERED DENIED**.

All matters for which this cause was referred to the Magistrate Judge having been considered and acted upon, it is **ORDERED** that the above-entitled and numbered cause be, and it hereby is, **RETURNED** to the district court for all purposes.

SIGNED on January 9, 2012.



NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE